



---

Volume 28 | Issue 4

Article 4

---

June 1922

## Business Trusts and Their Relation to West Virginia Law

James B. Riley

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Business Organizations Law Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

James B. Riley, *Business Trusts and Their Relation to West Virginia Law*, 28 W. Va. L. Rev. (1922).  
Available at: <https://researchrepository.wvu.edu/wvlr/vol28/iss4/4>

This Article is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact [ian.harmon@mail.wvu.edu](mailto:ian.harmon@mail.wvu.edu).

BUSINESS TRUSTS AND THEIR RELATION TO  
WEST VIRGINIA LAW.

By JAMES B. RILEY\*

Quite commonly associations of persons for business purposes are classified in to partnerships and corporations. Though this seems to be the common classification of business associations it is unscientific. There is at least one other business association well recognized by the courts, the resort to which threatens to undermine, in part at least, the control which the states have assumed over business enterprises by virtue of existing law applicable to corporations, partnerships and joint stock companies. Such an association is the business trust.

Trusts of this nature were in vogue long before it had become customary to take out charters for private corporations.<sup>1</sup> The apparent reason for their creation in late years appears to be prompted by the purpose of avoiding the hardship and burdens in the way of taxes and regulations imposed by general corporation laws. The state of Massachusetts had not in early times provided for joint stock companies having the attributes of corporations. In that state, the business trust came into favor, so much so that this particular kind of trust is usually discussed in the books under the title of the "Massachusetts Trust."<sup>2</sup>

## THE NATURE OF THE BUSINESS TRUST

The business trust is a trust formed for the purpose of carrying on business for a profit.<sup>3</sup> Such a trust cannot derive power from statutory enactment; but, from its very nature it is the result of an express declaration of trust. Thus it does not include any corporation, joint stock company or association organized under chapters 52, 53 and 54 of the West Virginia Code. Neither can any mutual benefit association, or for that matter, any association not organized for business purposes, be included; and this is so even though such organization results from an express declaration

---

\* Member of the Wheeling, W. Va., Bar.

<sup>1</sup> Wilgus, "Express Trusts," 13 MICH. L. REV. 71.

<sup>2</sup> SEARS, TRUST ESTATES AS BUSINESS COMPANIES, 2 ed., 1, 369.

<sup>3</sup> Note to Malley v. Bowditch, 7 A. L. R. 809.

of trust. In short, no association or group of persons, unless it be in the nature of an express trust formed for business purposes, is within the proper scope of this paper.

#### DISTINGUISHED FROM OTHER LEGAL RELATIONSHIPS

We can well imagine innumerable associations which start with the business trust in the nature of a pure trust and shade off into a limited partnership and other kinds of associations. It is not easy to tell where any given group of persons belongs; yet this is important in view of our statutes dealing with partnerships, corporations and different kinds of associations. We find that the courts have not always agreed where the exact lines of distinction fall. Thus the original Standard Oil Trust, which was held in Ohio to be a partnership<sup>4</sup> was held in *Rice v. Rockefeller*,<sup>5</sup> a New York case, to be a trust.

What must be done to keep an association for profit, formed under a declaration of trust, from being classed as a partnership? This is the practical question which presents real difficulty to the lawyer who is required to draw up articles for a business trust. The very nature of such an association, as well as its name, suggests that the law of trusts is one branch of the law to which he must look for a guide. Above all things else he must satisfy himself that the essential elements of an express trust are present. If a valid trust is created the rights and liabilities of all parties concerned are easily determined in accordance with the law of trusts.<sup>6</sup>

In the first place, the trustees must have title to the property to be used in the business and have control over it.<sup>7</sup> The importance of this was stressed by the New York Supreme Court of Appeals in the case of *Rice v. Rockefeller*, to which reference has just been made, in which the court said:

"The Standard Oil Trust represents a voluntary association. The effect of its creation is the concentration of supervisory powers in nine trustees, whose certificates of the trust are taken in the place of the stock and lands of the several corporations. The characteristic feature is the voluntary surrender of the control and management of the business of those corporations . . . ."<sup>8</sup>

<sup>4</sup> *State v. Standard Oil Co.*, 49 Oh. St. 137, 30 N. E. 279 (1892).

<sup>5</sup> 219 Mass. 360, 31 N. E. 907 (1892).

<sup>6</sup> Canfield, *Review of Sears: Trust Estates as Business Companies*, 22 COL. L. REV., 338.

<sup>7</sup> See cases collected in note to *Malley v. Bowditch*, 7 A. L. R. 809; WRIGHTINGTON, UNINCORPORATED ASSOCIATIONS, Sec. 14, p. 40.

<sup>8</sup> 219 Mass. 360, 31 N. E. 907, 908 (1892).

Even the courts of Massachusetts hold that the trustees must be free from the control of the beneficiaries, otherwise the relationship will be held to be that of a partnership.<sup>9</sup> In *Frost v. Thompson*,<sup>10</sup> a Massachusetts case, a voluntary association was organized under two instruments, one called the declaration of trust and the other the by-laws. These instruments provided that the shareholders representing two-thirds in value of outstanding shares could remove either or all of the trustees at any time, appoint others to fill the vacancies and could terminate the trust at any time by requiring conveyance of the property to new trustees or to a corporation. The shareholders were authorized to amend either the declaration of trust or the by-laws. The court held that the association was a partnership and not a trust. In that case the court said:

"A declaration of trust or other instrument providing for the holding of property by the trustees for the benefit of the owners or the assignable certificates representing the beneficial interest in the property may create a trust or a partnership. Whether it is one or the other depends upon the way in which the trustees are to conduct the affairs committed to their charge. If they are to act as principals and are free from the control of the certificate holders a trust is created, but if they are subject to the control of the certificate holders it is a partnership."<sup>11</sup>

To what extent the trustees must be vested with the control and management of the trust business and property cannot be ascertained with any degree of satisfaction from the cases. The lines of distinction between the cases decided by the courts of other jurisdictions are indeed narrow.<sup>12</sup> In our own jurisdiction the precise question has never been before the court. The Supreme Court, however, has had cases before it in which it was called upon to determine whether or not a given group of persons, associated together, constituted a partnership; and it seems to be the holding of that court that where the members of the group retain control

<sup>9</sup> SEARS, TRUST ESTATES AS BUSINESS COMPANIES, sec. 182, p. 369. *Hoadley v. Essex*, 105 Mass. 519 (1870); *Whitman v. Porter*, 107 Mass. 522 (1871); *Smith v. Moore*, 129 Mass. 222 (1880); *Gleason v. McKay*, 134 Mass. 419 (1883); *Phillips v. Blatchford*, 137 Mass. 510 (1884); *Ricker v. Loan & Trust Co.*, 140 Mass. 346, 5 N. E. 284 (1885); *Howe v. Morse*, 174 Mass. 491, 55 N. E. 213 (1899); *Williams v. Boston*, 208 Mass. 497, 94 N. E. 808 (1911); *Frost v. Thompson*, 219 Mass. 360, 106 N. E. 1009 (1914).

<sup>10</sup> 219 Mass. 360, 106 N. E. 1009 (1914).

<sup>11</sup> *Ibid.*, 106 N. E. 1010.

<sup>12</sup> See WRIGHTINGTON, UNINCORPORATED ASSOCIATIONS, sec. 14, p. 43.

over the undivided profits of the business they are partners.<sup>13</sup> In *Clark v. Emery*<sup>14</sup> the court said:

“And the true test as to whether the partnership does exist is, did the supposed partner acquire by his bargain any property in, or control over, or specific lien to, the profits while they remained undivided, in preference to other creditors? If he did, he is a partner; if otherwise, not.”

If the control and ownership of the undivided profits is the test of a partnership which prevails in this jurisdiction, it follows that where the supposed *cestuis que trustent*, of what purports to be a business trust, retain a part of the control of the business, the relationship verges on that of a partnership.

It is advisable that the trust instrument expressly limit the liability of each beneficiary to the value of his share.<sup>15</sup> Here the well settled rules of law governing notice apply. If the trustees and beneficiaries are held out as partners, it is a partnership by estoppel, at least so far as third parties without notice are concerned;<sup>16</sup> and this is so even though the trust instrument in fact creates a pure trust. The trust relationship can be upheld, as against third parties, only when such parties know they are dealing with the trustees who cannot bind the beneficiary to any liability beyond the value of the trust *res*, or have reason to know it. A provision in the trust instrument, expressly limiting the liabilities of beneficiaries to the value of the trust *res*, would be sufficient notice to parties dealing with the trustees as such,<sup>17</sup> and would aid a court to distinguish the trust from other kinds of associations. There can hardly be any objection to such a provision; otherwise the whole doctrine confining the liability of the beneficiary to the amount of the trust *res*, which pervades our entire law of trusts, would be undermined.

The trustees of a business trust may issue transferable shares of stock to the beneficiaries, without risk of destroying or altering the trust relationship. Such practice is quite common in states

<sup>13</sup> *Clark v. Emery*, 58 W. Va. 637, 52 S. E. 770, 5 L. R. A. (N. S.) 503 (1906); *Chapline v. Conant*, 3 W. Va., 507, 100 Am. Dec. 766 (1869); *Tyler v. Teter*, 75 W. Va. 217, 83 S. E. 906 (1914).

<sup>14</sup> 58 W. Va. 637, 52 S. E. 770 (1906).

<sup>15</sup> *Bank of Topeka v. Eaton*, 100 Fed. 8 (1900).

<sup>16</sup> GILMORE, *PARTNERSHIP*, sec. 21, pp. 61-68; *Townley Bros. v. Crickenberger*, 64 W. Va. 379, 63 S. E. 320 (1908); *Moore v. Harper*, 42 W. Va. 39, 24 S. E. 633 (1896).

<sup>17</sup> *Bank of Topeka v. Eaton*, *supra*; *Williams v. Boston*, 208 Mass. 497, 94 N. E. 808 (1911).

where business trusts are in use and has been upheld by the courts.<sup>18</sup> It would seem that the holding of the courts upon this question is correct in theory. We often speak of a trustee having the legal title, while the *cestui que trust* has the equitable title to the trust property. Strictly this is not so; for the whole title necessary to carry out the trust is vested in the trustee.<sup>19</sup> He can transfer his title to a *bona fide* purchaser for value even though such transfer is in breach of trust. The *cestui que trust* has no title but simply a right *in personam* against the trustee with reference to the trust *res*, which right is enforceable primarily in a court of equity.<sup>20</sup> To represent this equitable chose in action by certificates of stock cannot by any stretch of legal imagination be made to alter the relations of the parties, for the certificate of stock is nothing more or less than a means of evidencing a chose in action that has already come into being by virtue of the declaration of trust.

#### VALIDITY AND POWERS

The courts of other states have had to pass upon the validity of the business trust and where the question has come before the courts almost universally the business trust has been held valid. In general a business trust can be created to carry on any lawful business or businesses desired, as the parties, the declarant and trustees provide for, unless there are express statutory limitations.<sup>21</sup> It, therefore, is safe to say, in view of the decisions of other jurisdictions, that a trust can be created in West Virginia to buy and sell real and personal property, or to engage in any lawful business for profit within the limitations prescribed within the trust instrument, and subject only to the statutory regulations and inhibitions applicable to individuals engaged in the same business.

There is nothing in the West Virginia statutes or constitution which prohibits the business trust as such. In fact no use is made of the term "business trust" in any of our statutes, though undoubtedly the business trust comes within some at least of the West Virginia statutes regulating business enterprises.

<sup>18</sup> Cases cited in note to *Malley v. Bowditch*, *supra*, 616. In *Irons v. Hat & Notion Co.*, 86 W. Va. 685, 104 S. E. 111 (1920), the court sustained a voting trust in which the trustees were authorized to issue trustee's certificates.

<sup>19</sup> *Carney v. Kain*, 40 W. Va. 758, 23 S. E. 650 (1895).

<sup>20</sup> Stone, "The Rights of the Cestui que Trust," 17 COL. L. REV. 467, 500; MATTLAND, EQUITY, 77; CLARK, EQUITY, sec. 280. But see also 28 HARV. L. REV. 507 and 18 HARV. L. REV. 53.

<sup>21</sup> Cases collected in note to *Malley v. Bowditch*, *supra*, 613; Wilgus, "Express Trusts" 13 MICH. L. REV. 71. But see SEARS, TRUST ESTATES AS BUSINESS COMPANIES, sec. 174, as to opinion by Attorney General of Ohio.

It is clear, for instance, that a trust cannot be created for the purpose of carrying on a banking business within the state of West Virginia. The statute<sup>22</sup> reads as follows:

"It shall be unlawful for any individual or association of individuals doing business in this state to use in connection with such business the term 'bank,' 'banker,' 'banking company,' or 'trust company,' or to receive deposits or send foreign exchange until they shall have taken out a charter and complied with the statutes governing banks and trust companies."

A business trust cannot carry on the business of a public utility without complying with all the regulations governing the business of a public utility. Under the West Virginia statutes all persons and individuals in any such business, and all persons, associations, corporations and agencies engaged in the business of a public utility are within the jurisdiction of the public service commission. In the acts of 1921,<sup>23</sup> public service corporations are defined as follows:

"The words 'public service corporation' used in this act shall include all persons, associations of persons, firms, corporations, municipalities and agencies engaged or employed in any business herein enumerated, or in any other public service business whether above enumerated or not, whether incorporated or not."

It would seem that a business trust formed for the purpose of carrying on the insurance business is subject to the regulations of insurance companies prescribed in chapter 77 of the Acts of 1907.<sup>24</sup> The statute<sup>25</sup> reads in part as follows:

"Whenever the word 'company' is used in this act, it shall be held to include corporations, associations, partnerships and individuals."

Here the language of the statute is broad enough to cover business trusts and clearly the intent of the legislature was to regulate the insurance business no matter by whom carried on.

The Blue Sky Law<sup>26</sup> expressly refers to persons, co-partnerships, associations, domestic and foreign corporations doing business

---

<sup>22</sup> W. VA. CODE, ch. 54, sec. 78.

<sup>23</sup> Ch. 150, sec. 3.

<sup>24</sup> W. VA. CODE, ch. 34.

<sup>25</sup> *Ibid.*, sec. 1438.

<sup>26</sup> W. VA. CODE SUPP., ch. 55 B.

within the state. Similar language is used in the section of the West Virginia Code<sup>27</sup> regulating domestic investment companies; in the fraudulent sales act,<sup>28</sup> in the gross sales tax act,<sup>29</sup> and in the workmen's compensation act.<sup>30</sup>

Section 1 of chapter 53 of the Acts of 1917,<sup>31</sup> provides that no person or persons shall carry on business within the state under an assumed or fictitious name unless such person or persons shall file in the office of the clerk of the county or counties in which such person or persons own, conduct or transact or intend to own conduct or transact such business or maintain an office or place of business, a certificate setting forth the name under which the business is owned or is to be conducted or transacted, together with the true and full name or names of the person or persons owning, conducting or transacting the same. Does this section have any application to the trustees of a business trust? The answer is to be found in the language of the statute itself. Not only is the language of the statute broad enough to cover trustees conducting business under an assumed name, but it would seem, from the fact that corporations and partnerships organized under the laws of the state are expressly excluded from the operation of this act,<sup>32</sup> that the legislature had in mind the protection of those dealing with any other persons carrying on business under an assumed name regardless of the capacity in which the persons are acting in carrying on that business. As the beneficiaries of a business trust do not own, conduct or transact the trust business,<sup>33</sup> it would seem that the certificate filed in compliance with this section of the statute need not set forth the names of the beneficiaries.

It would not be profitable to review all the West Virginia statutes regulating business enterprises, for the purpose of determining whether or not business trusts come within the meaning of those statutes. In determining whether or not business trusts come within the meaning of a particular statute, two questions should be answered: first, is the language of the statute broad enough; and, second, what purpose did the legislature have in passing the statute.<sup>34</sup> If the language of the statute is broad enough and if

<sup>27</sup> Ch. 55 B, sec. 1.

<sup>28</sup> ACTS OF 1920, ch. 108.

<sup>29</sup> *Ibid.*, ch. 110.

<sup>30</sup> W. VA. CODE, ch. 15 P, sec. 9.

<sup>31</sup> W. VA. CODE SUPP. 1918, sec. 3601b.

<sup>32</sup> W. VA. CODE SUPP. 1918, sec. 3601e.

<sup>33</sup> SEARS, TRUST ESTATES AS BUSINESS COMPANIES, 2 ed., 92, sec. 64.

<sup>34</sup> *City of Charleston v. Charleston Brewing Co.*, 61 W. Va. 34, 56 S. E. 198 (1906); *Daniel v. Simms*, 49 W. Va. 554, 39 S. E. 690 (1901).



the evident intention of the legislature in passing the statute was to regulate the particular business enterprise, without regard to who carried it on, it would seem that a trust formed for the purpose of carrying on such business would be within the clear meaning of the statute and would be subject to the regulations and inhibitions prescribed therein.

#### DURATION

A business trust may be created for any period for which any other trust may be created. Of course it must not constitute an unreasonable restraint or alienation or violate the rule against perpetuities. A declaration of trust involving the bare possibility of an estate or interest vesting beyond a life in being and twenty-one years and ten months thereafter violates the rule against perpetuities, as that rule is understood in West Virginia.<sup>35</sup> Trusts, of the kind under discussion, do not, however, involve a perpetuity in the sense of the rule against perpetuities because the entire interest of both the trustees and *cestuis que trustent* is present and vested.<sup>36</sup>

Whether the trust would be invalid because it causes an illegal suspension or alienation has nothing to do with the rule against perpetuities. If the equitable interest is indestructible, it would seem that a trust created for a period beyond lives in being and twenty-one years thereafter cannot be upheld. This seems to be the general American rule:

"The Courts of this country," according to Professor Kales, "seem to be moving towards the general announcement of the rule that trusts of absolute indestructible equitable interests cannot be made to last longer than lives in being and twenty-one years and that any provision that might by any possibility postpone the term of the trusteeship for longer than that period is wholly void from the beginning."<sup>37</sup>

In so far as the interests of the *cestuis que trustent* are alienable a business trust created for an indefinite period could not be successfully attacked on the ground that it constitutes an unreasonable suspension of alienation, for such a trust does not in any way involve the suspension of the power of alienation.<sup>38</sup> Where also

<sup>35</sup> Woodall v. Bruen, 76 W. Va. 193, 85 S. E. 170 (1915); Starcher Bros. v. Duty, 61 W. Va. 873, 56 S. E. 524 (1907).

<sup>36</sup> SEARS, TRUST ESTATES AS BUSINESS COMPANIES, 2 ed., sec. 104; GRAY, PERPETUITIES, 2 ed., sec. 412.

<sup>37</sup> TRANSFER OF TITLE TO REAL ESTATE, sec. 72.

<sup>38</sup> Canfield, Review of Sears: Trust Estates as Business Companies, 22 COL. L. REV. 388.

the equitable interest is terminable as where an estate is given to A in fee in trust for B in fee with a provision that both parties together can terminate the trust, the trust will be upheld.<sup>39</sup>

## FOREIGN BUSINESS TRUSTS

Foreign business trusts doing business within the state have many advantages over foreign corporations likewise engaged in business within the state. For instance, section 30 of chapter 54 of the West Virginia Code, which prescribes certain conditions precedent which must be fulfilled before a foreign corporation can hold property and engage in business within the state, has no application to business trusts created outside the state.<sup>40</sup> Even after this section of the Code is complied with, a foreign corporation, which seeks to do business within the state, has no greater rights, powers and privileges than a domestic corporation engaged in the same business within the state, and is subject to the same regulations, restrictions and liabilities.<sup>41</sup>

So far as the power of the state over foreign corporations is concerned, the status of such a corporation is by no means analogous to that of a business trust. Many are the limitations upon the powers of a foreign corporation. They are to be found in the charter of such a corporation, in the laws of the state of its creation,<sup>42</sup> as well as in the laws of the state where it seeks to exercise those powers.<sup>43</sup>

The charter of a corporation has no extraterritorial effect except by the consent and comity of the state.<sup>44</sup> On this point, the Supreme Court of the United States, in *Paul v. Virginia*,<sup>45</sup> said:

"The corporation being the mere creation of local law can have no legal existence beyond the limits of the sovereignty where created."

<sup>39</sup> GRAY, PERPETUITIES, 2 ed. sec. 236; *Hart v. Seymour*, 147 Ill. 598, 35 N. E. 246 (1893).

<sup>40</sup> This section reads in part as follows:

"Any corporation duly incorporated by the laws of any other State or territory of the United States or District of Columbia, or any foreign country may, unless it be otherwise expressly provided, hold property and transact business in this State upon complying with the provisions of this section and not otherwise."

<sup>41</sup> *Floyd v. Investment Co.*, 49 W. Va. 327, 38 S. E. 653, 54 L. R. A. 536, 87 Am. St. Rep. 805 (1901); *Irving v. Building & Loan Assn.*, 63 W. Va. 349, 358, 61 S. E. 325 (1908); *Carnegie Nat. Gas Co. v. Swiger*, 72 W. Va. 557, 79 S. E. 3, L. R. A. 1916 D, 758 (1913).

<sup>42</sup> *Republican Mountain Silver Mines v. Brown*, 58 Fed. 644, 24 L. R. A. 644 (1893); *Canada Southern R. Co. v. Gebhard*, 109 U. S. 527 (1883).

<sup>43</sup> *Floyd v. Investment Co.*, *supra*; *Fowler v. Bell*, 90 Tex. 150, 37 S. W. 1058, 39 L. R. A. 254 (1896); *Interstate Savings & Loan Assn. v. Strine*, 58 Neb. 133, 78 N. W. 377 (1899).

<sup>44</sup> *Paul v. Virginia*, 8 Wall. 168 (1869); *Norfolk & Western R. Co. v. Pennsylvania* 136 U. S. 114 (1890); *Fire Assn. of Phila. v. New York*, 119 U. S. 110 (1886); *Pembina Consol. Silver Min. & Mill Co. v. Pennsylvania*, 125 U. S. 181 (1888); *Ins. Co. v. Oliver, Ins. Co. v. Mass.*, 10 Wall. 566 (1870); *Orient Ins. Co. v. Daggs*, 172 U. S. 557 (1898); *Floyd v. Investment Co.*, *supra*.

<sup>45</sup> 8 Wall. 168, 181 (1869).

In that case the court held that a corporation is not a citizen within the meaning of article 4, section 2, of the United States Constitution, which provides that citizens of each state shall be entitled to the privileges and immunities of the citizens of the several states.

It follows that any state may exclude a foreign corporation altogether or may impose upon it such terms as it chooses as a condition precedent to allowing it to do business, and it matters not what are the rights and powers of such corporation in the state of its creation, nor does it matter that there is discrimination in favor of domestic corporations doing the same business. The question is solely one of legislative policy and is not open to inquiry.<sup>46</sup> It is well settled, however, that this power which the state has over foreign corporations seeking to do business within it, must not be exercised so as to amount to a regulation of interstate commerce or to interfere with corporations engaged in the business of the government.<sup>47</sup>

It would seem that the trustees of a foreign business trust are citizens within the meaning of the immunity clause of the United States Constitution. Their character as citizens surely is not altered by the fact that they are acting in a fiduciary and not in a private capacity.<sup>48</sup> Not only does section 33 of chapter 54 and the other sections of the West Virginia Code regulating foreign corporations not apply to the trustees of a foreign business trust, but no act of the legislature, no matter how carefully worded, can be made to apply to them which does not in the same way apply to citizens of this state and, for that matter, to citizens of other states engaged as trustees in carrying on the same business.

The business trust as a method of doing business has appealed to persons engaged in business in other states. The reason lies in the fact that it has the advantages of corporate existence, without being subject to the statutory regulations expressly pertaining to corporations. How far it will come into favor with the legal profession and the business men of our state is a matter of conjecture. It is

---

<sup>46</sup> *Doyle v. Continental Ins. Co.*, 94 U. S. 535, syl. 4 (1876). See also *CLARK, CORPORATIONS*, 768.

<sup>47</sup> *Floyd v. Investment Co.*, *supra*. *CLARK, CORPORATIONS*, 764, 767, 768.

<sup>48</sup> *Shirk v. City of La Fayette*, 52 Fed. 857 (1892); *Robey v. Smith*, 131 Ind. 342, 30 N. E. 1093, 15 L. R. A. 792 (1892); *Farmers' Loan & Trust Co. v. Ry. Co.*, 27 Fed. 146 (1886).

equally a matter of conjecture to what extent the business trust will be made the subject of legislative control and regulation, if it should come into general use in this state. The legislatures of all the states, except those of Massachusetts and Oklahoma, have maintained a policy of hands off.<sup>49</sup> It is not improbable that such will continue to be the policy of our own legislature, especially in view of the fact that this method of doing business is governed by the well established rules applicable to express trusts.

---

<sup>49</sup> SEARS, TRUST ESTATES AS BUSINESS COMPANIES, 2 ed., 406.